IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1032 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

TULASHYABHAI LAXMANBHAI VARLI

Versus

STATE OF GUJARAT

Appearance:

MS BANNA S DUTTA for Petitioner

MR BUKHARI, APP, for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT
and
MR.JUSTICE A.L.DAVE

Date of decision: 05/12/2000

ORAL JUDGEMENT

(Per : MISS JUSTICE R.M.DOSHIT)

1. This appeal arises of the judgment and order dated 17th October, 1992, passed by the learned Additional Sessions Judge, Valsad, in Sessions Case No.97 of 1991. The appellant before this Court is the accused. The accused has been convicted for offence punishable under Section 302 of Indian Penal Code and has been sentenced with rigorous imprisonment for life and a fine of Rs.500/-. He has been further sentenced with rigorous imprisonment for six months in case of default in payment of fine.

2. The accused-appellant is alleged to have killed his mother-in-law Mangiben Nigalbhai on 4th April, 1990. According to the prosecution, the accused with his wife-Paruben and children was residing with his parents-in-law, one Nigalbhai Laxubhai and Mangiben Nigalbhai at village Ghoghali Patelpada. On 4th April, 1990, at around 6 o' clock in the evening, in the house of Nigalbhai, the accused was beating his son-Mahendra. The deceased Mangiben, the mother of Paruben tried to intervene and to free the child Mahendra. Feeling enraged, the accused took an axe and hit Mangiben on the forehead and the chest. The said injuries proved to be fatal and Mangiben died instantaneously. The complaint in connection with this incidence was lodged by Nigalbhai Laxubhai, the husband of the deceased-Mangiben and the father-in-law of the accused. The said Nigalbhai (P.W.4) has proved the complaint (Ex.18). He has supported what he had stated in the complaint. He has stated that the incidence occurred when deceased-Mangiben and the witness-Nigalbhai tried to pull away Mahendra because the accused was beating him without any reason. The child-Mahendra was sent outside in the village. Feeling enraged, the accused took the axe lying in the house. Feeling apprehensive, the witness-Nigalbhai and his daughter-Paruben hid behind the fence. But the deceased-Mangiben, who was standing in the courtyard, was hit on the forehead by the accused with the axe. After hitting the deceased-Mangiben, the accused ran away and the deceased-Mangiben died within moments.

2.1 Pursuant to the complaint lodged by said-Nigalbhai, Police took over the investigation, prepared inquest Panchnama and recovered the offending axe from the courtyard of the house. In the cross-examination, complainant-Nigalbhai has admitted that the accused was his son-in-law and was residing with his wife and family with him (i.e. the father-in-law). He has also admitted that the accused was not willing to stay with his father-in-law and wanted to have a separate residence. Another eye-witness Paruben (P.W.5) has also

supported the evidence of Nigalbhai (P.W.4). She has also admitted that the accused was not willing to reside with her father-Nigalbhai and wanted a separate residence. The Medical Officer, Ahwa Civil Hospital, Dr. Vinodkumar B. Gandhi (P.W.1) had performed autopsy on the body of the deceased-Mangiben. He has proved the post-mortem note (Ex.11). He had certified that the deceased had received an incised wound of the size 15 x 2 x 7 cms. over the right eye, three perforated wounds of the size 3 x 2 x 7 cms. on the left side of the chest and one perforated wound over left side of the neck of the size 2 x 2 x 5 cms. He has certified that the deceased had suffered fracture of the skull involving frontal and temporal bones, brain was grossly congested, lacerations were found on the brain involving temporal and frontal region and the said area of the brain was grossly distorted. The 3rd, 4th and 5th ribs of the left lactoral region were fractured and laceration was found on the left lung pleura. Perforation was found on the anterial wall of the heart and the left coronary artery was amputated. He opined that the "deceased died due to shock due to haemorrhage following severe injuries involving heart and brain".

3. Considering the evidence on record, it is proved beyond doubt that the incidence in question occurred in the courtyard (Vada) of the house of the witness-Nigalbhai Laxubhai. It was but natural that at the time of incidence, i.e. 6.0 o' clock in the evening, the witness-Nigalbhai Laxubhai, Paruben, deceased-Mangiben and the accused all were present in the house. The evidence of both the eye-witnesses is natural and the eye-witnesses are the family members of the accused, i.e. the father-in-law of the accused and the wife of the accused and there is no reason why their evidence should not be believed. The homicidal death of the deceased-Mangiben is also proved by the medical evidence. We, therefore, have no hesitation in holding that the deceased-Mangiben died homicidal death and that it was the accused who gave the fatal injuries to the deceased-Mangiben with the muddamal axe, a sharp cutting weapon. However, we do not agree with the learned Trial Judge that the accused has committed offence of murder punishable under Section 302 of I.P.C. It has come in the evidence of both the eye-witnesses that the accused-Tulashyabhai was not willing to stay with his parents-in-law, i.e. the witness-Nigalbhai Laxubhai and the deceased-Mangiben and was demanding a separate residence. It is, therefore, obvious that the accused was agitated for he had to live with his parents-in-law against his wish. It is also proved that just before the

incidence, the accused was beating his son-Mahendra and deceased-Mangiben intervened. The witness-Nigalbhai freed Mahendra from the accused and sent him away. This intervention by his parents-in-law enraged the accused. He took the axe and hit Mangiben, who was present in the courtyard. It is, therefore, evident that the accused had hit deceased-Mangiben in the heat of passion. In our view, the circumstances in which the deceased-Mangiben was hit by the accused should attract exception 4 to Section 300, I.P.C. The accused, though has committed culpable homicide, he cannot be said to have committed murder punishable under Section 302, I.P.C. It is also proved beyond reasonable doubt that the accused had a deadly weapon like axe and hit the deceased with the sharp edge of the axe right over the head breaking open the skull and injuring the brain as well. The accused did not stop with this first blow, but went on hitting the deceased-Mangiben several times causing fracture of ribs and injuring the heart as well as the coronary artery. We, therefore, hold that the accused has committed culpable homicide not amounting to murder with the intention of causing death punishable under Section 304 Part-I I.P.C.

4. In view of the above discussion, the appeal is partly allowed. The conviction of the appellant-accused under Section 302, I.P.C. is quashed and set aside. Instead, the accused is convicted under Section 304, Part-I, I.P.C. The sentence of life imprisonment passed upon the accused is also set aside. Instead, the accused-appellant is sentenced with rigorous imprisonment for 10 years. The sentence of fine and imprisonment in case of default in payment of fine is confirmed. The muddamal articles be disposed of as ordered by the learned Trial Judge.

[Ms. R.M. DOSHIT, J.]

[A.L. DAVE, J.]

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